IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M. No. 968-C of 2006 and
R.S.A. No. 488 of 2006

Date of Decision: 17.8.2006

Surinder Kaur and others

...Appellants.

Versus

Satya Devi and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. H.K.Aurora, Advocate for the appellants.

AJAY KUMAR MITTAL, J.

C.M. No. 968-C of 2006

For the reasons mentioned in the application, which is supported by an affidavit, the delay of 31 days in filing the appeal is condoned.

CM stands disposed of accordingly.

RSA Nos. 488 and 1598 of 2006

This order shall dispose of two appeals being RSA No. 488 of 2006 and RSA No. 1598 of 2006 as facts involved in these cases arise from dispute relating to the same property.

RSA No. 488 of 2006 by the plaintiffs-appellants is directed against the judgment and decree dated 1.9.2005 passed by the lower appellate court vide which the judgment and decree dated 6.12.2003 passed by the trial court dismissing civil suit No. 215 of 1997 has been affirmed whereas RSA No. 1598 of 2006 is directed against the judgment

and decree dated 1.9.2005 passed by the lower appellate court vide which the judgment and decree dated 6.12.2003 passed by the trial court decreeing civil suit No. 55 of 1999 filed by Satya Devi has been affirmed.

The facts as narrated in civil suit No. 215 of 1997 are that Surinder Singh son of Hazara Singh was having share in the land in dispute besides land at Malmajara. Defendant No.1 got married with Surinder Singh deceased during the lifetime of her husband Gurmail Singh without disclosing her earlier marriage and that said Gurmail Singh is still alive and the said marriage with Surinder Singh was void ab initio. It was pleaded that defendant No.1 cannot claim any property left by Surinder Singh. It was pleaded that Surinder Singh died on 11.6.1995 as he was suffering from tuberculosis of lung and was being looked after and served by his sister and nephews i.e. the plaintiffs. It was further pleaded that Surinder Singh had executed a Will dated 3.8.1994 bequeathing ½ share in favour of plaintiff No.1 and his share ¼ each in favour of plaintiffs No.2 and 3. It was further pleaded that Surinder Singh died issueless and the suit land was self-acquired property of the father of Surinder Singh and, therefore, he was competent to execute the Will. It was further pleaded that defendant No.1 by misrepresenting the facts got mutation No. 4948 sanctioned in her favour as well as in favour of defendant No.2 which is illegal and void. The defendants refused to admit the claim of the plaintiffs. Hence, the suit.

Upon notice, defendant No.1 filed written statement by raising various preliminary objections. It was pleaded that the plaintiffs are neither owners nor in possession nor have got any concern with the suit property. It was further pleaded that defendant No.1 was owner in possession of the suit land after the death of her husband Surinder Singh. It was further pleaded that the mutation was rightly sanctioned in favour of defendant No.1. It was further pleaded that after the death of Surinder Singh, his last

rites were performed by defendant No.1 and after about 20 days, she was turned out from the house by the plaintiffs. The execution of will was stated to be forged, fabricated and fictitious document. Remaining averments made in the plaint were denied.

The trial court took issues No.1 and 6 and after appreciating the evidence led by the parties came to the conclusion that the Will dated 3.8.1994 suffered from suspicious circumstances and was not executed by Surinder Singh. The trial court under issue No. 6-A held that the plaintiffs had failed to prove that Satya Devi was married to Gurmail Singh prior to her marriage with Surinder Singh and that her marriage with Surinder Singh was void abinitio and, therefore, held the plaintiffs not entitled to the succession to the share of Surinder Singh. Further under issue No.2, mutation No. 4948 qua the share of Surinder Singh on the basis of natural succession was held to be correct, legal and valid. Accordingly, on the basis of the aforesaid findings, the suit of the plaintiffs was dismissed vide judgment and decree dated 6.12.2003. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 1.9.2005.

The facts as narrated in civil suit No. 55 of 1999 are that the suit property as fully detailed in the head note of the plaint was under the ownership of Surinder Singh and defendant No.1 is the sister, defendants No.2 and 3 are the nephews, defendant No.4 is the mother whereas defendant No.5 is the brother of deceased Surinder Singh. Surinder Singh had died on 11.6.1995 leaving behind the plaintiff and defendant No.4 as his sole heirs and therefore, they were entitled to succeed to his property. It was pleaded that defendants No.1, 2 and 3 without any right have started claiming the ownership in the property on the basis of Will dated 3.8.1994 and had got sanctioned mutation No. 1507 on 29.10.1998 in their favour. It

was claimed that the said mutation dated 29.10.1998 does not affect the right of the plaintiff in any manner and the defendants had refused to admit the claim of the plaintiff.

Upon notice, defendants No.1 to 3 filed written statement by raising various preliminary objections. It was pleaded that Surinder Singh was co-sharer in the suit property which was joint with defendants No.4 and 5 and that defendant No.5 was cultivating the land in dispute on his behalf and other co-sharers. It was further pleaded that the plaintiff and defendant No.4 were the natural heirs of Surinder Singh and by the operation of the Will dated 3.8.1994, they were disinherited by the deceased for the reasons given in the Will and therefore, defendants No.1 to 3 were his legal heirs. It was further pleaded that mutation of the estate was opposed by the plaintiff before the Assistant Collector Ist Grade, Hoshiarpur who upheld the Will and sanctioned the mutation on the basis of the Will on 29.10.1998 and the appeal filed by the plaintiff against the said order was also dismissed by the Collector, Hoshiarpur vide order dated 25.5.1999. The other averments made in the plaint were denied.

On the pleadings of the parties, the trial court framed the following issues:-

> "1. Whether the plaintiff is entitled for declaration as prayed for? OPP
>
> 2. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
>
> 3. Relief."

The trial court after appreciating the evidence led by the parties held mutation No.4948 qua the share of Surinder Singh on the basis of natural succession sanctioned in favour of Satya Devi to be legal, valid and correct. Further, the plaintiff was declared to be owner in possession of the

land fully detailed and described in the head notice of the plaint. Accordingly, the suit filed by plaintiff Satya Devi was decreed vide judgment and decree dated 6.12.2003. On appeal, the lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 1.9.2005.

Learned counsel for the appellants could not pin-point any misreading or misappreciation of evidence that the findings of facts recorded by both the courts below that the appellants herein had failed to prove that Satya Devi was married to Gurmail Singh prior to her marriage with Surinder Singh and that her marriage with Surinder Singh was void abinitio and further that Will dated 3.8.1994 was surrounded by suspicious circumstances was erroneous or perverse in any manner. In view of the aforesaid findings of facts, no illegality or perversity could be found in the judgments and decrees passed by the Courts below warranting interference by this court in these regular second appeals. No question of law, much less a substantial question of law arise in both the appeals.

In view of the above, finding no merit in these appeals, the same are hereby dismissed.

August 17, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**